



Billing Code 4410-CN-P

DEPARTMENT OF JUSTICE

28 CFR Part 16

CPCLO Order No. 009-2012

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final Rule.

SUMMARY: The Department of Justice (DOJ or Department) is issuing a final rule for a new Department-wide Privacy Act system of records entitled, Debt Collection Enforcement System, JUSTICE/DOJ-016. The Department is exempting the Debt Collection Enforcement System, JUSTICE/DOJ-016, pursuant to 5 U.S.C. 552a(j) and (k) from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H) and (I), (5) and (8); (f) and (g) of the Privacy Act for the reasons set forth in the following text. Information in this system of records relates to matters of law enforcement efforts associated with debt collection purposes, and certain records in this system are exempt from certain provisions of the Privacy Act in order to avoid interference with such law enforcement functions and responsibilities of the DOJ.

EFFECTIVE DATE: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Holley B. O'Brien, Director, Debt Collection Management Staff, Justice Management Division, Department of Justice, at (202) 514-5343.

SUPPLEMENTARY INFORMATION: Notice of the proposed rule with invitations to comment was published on February 21, 2012, at 77 FR 9878. The Department received

one comment from a member of the public regarding exemption from the access provisions of the Privacy Act. The Department accepted the comment but has declined to adopt the comment because the system of records is validly exempt from the access provisions of the Privacy Act for the reasons set forth below. In addition, the Department is making minor stylistic changes to the authority cited for Part 16.134 to reflect only the authority for the proposed rule, which is 5 U.S.C. 552a. Further, the Department is making a minor stylistic change to Part 16.134(a) by adding the phrase “pursuant to 5 U.S.C. 552a(j)(2)” after the phrase “[t]he following system of records is exempt” to clarify the statutory reason for the exemption.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 2940-2008, 28 CFR Part 16 is amended as follows:

PART 16--[AMENDED]

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

Subpart E – Exemption of Records Systems Under the Privacy Act

2. Section 16.134 is added to subpart E to read as follows:

§ 16.134 Exemption of Debt Collection Enforcement System, Justice/DOJ-016.

(a) The following system of records is exempt pursuant to 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H) and (I), (5)

and (8); (f) and (g) of the Privacy Act. In addition, the system is exempt pursuant to 5 U.S.C. 552a(k)(2) from subsections (c)(3); (d)(1), (2), (3), and (4); (e)(1); (4)(G), (H), and (I); and (f). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) or (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system, or the overall law enforcement process, the applicable exemption may be waived by the DOJ in its sole discretion.

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3), the requirement that an accounting be made available to the named subject of a record, because certain records in this system are exempt from the access provisions of subsection (d). Also, because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal any investigative interest in the individual. Revealing this information may thus compromise ongoing law enforcement efforts. Revealing this information may also permit the record subject to take measures to impede the investigation, such as destroying evidence, intimidating potential witnesses or fleeing the area to avoid the investigation.

(2) From subsection (c)(4) notification requirements because certain records in this system are exempt from the access and amendment provisions of subsection (d) as well as the access to accounting of disclosures provision of subsection (c)(3).

(3) From subsections (d)(1), (2), (3), and (4) because access to the records contained in this system might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing debt

collection investigations or other law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsection (e)(1) because it is not always possible to know in advance what information is relevant and necessary for law enforcement purposes.

(5) From subsection (e)(2) to avoid impeding law enforcement efforts associated with debt collection by putting the subject of an investigation on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that investigation.

(6) From subsection (e)(3) to avoid impeding law enforcement efforts in conjunction with debt collection by putting the subject of an investigation on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that investigation.

(7) From subsection (e)(4)(G), (H) and (I) because portions of this system are exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(8) From subsection (e)(5) because many of the records in this system are records contributed by other agencies and the restrictions imposed by (e)(5) would limit the utility of the system.

(9) From subsection (e)(8), because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on the DOJ and may alert the subjects of law enforcement investigations, who might be otherwise unaware, to the fact of those investigations.

(10) From subsections (f) and (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

April 5, 2012 _____

Date _____

Nancy C. Libin
Chief Privacy and Civil Liberties Officer
United States Department of Justice

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